

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner is a single person household.
2. Petitioner started part-time employment on or about October 12, 2007 with a retail store. Petitioner was employed until December 27, 2007.
3. T.P. is a program eligibility specialist who handles petitioner's case. T.P. has been petitioner's program eligibility specialist at all times pertinent to this case. T.P. is supervised by D.B-B. D.B-B. concurred with T.P.'s actions in this case.

4. T.P. learned about petitioner's employment on or about January 7, 2008 when she received information from B.L. of the Fuel Assistance Office. B.L. forwarded petitioner's pay stubs and a copy of a January 7, 2008 letter that petitioner sent B.L. In that letter, petitioner wrote that she was no longer employed and that her last work date was December 27, 2007.

5. On or about January 15, 2008, T.P. sent petitioner a Verification Request Form indicating that the fuel office had forwarded her the petitioner's pay stubs and that T.P. did not know that petitioner had been working. Petitioner was informed that if she were no longer working she needed to have her employer complete the Separation from Employment form before employment income could be removed from calculating her Food Stamps.¹

6. Petitioner wrote T.P. a letter dated January 18, 2008 that she was no longer employed. Petitioner also wrote that she sent the Separation from Employment form to her former supervisor.

7. The petitioner informed T.P. that she had not received a completed Separation from Employment form back

¹ The pay stubs had been faxed from a UPS store, and they had no identifying employer information. T.P. identified UPS as the employer. This was a mistake and was later corrected.

from the employer. T.P. offered to contact the employer. Petitioner supplied T.P. with contact information, specifically H.C.

8. On or about February 7, 2008, T.P. telephoned the employer and spoke to H.C. who based her information solely on the petitioner's employment records. T.P. was informed that petitioner walked off the job on December 27, 2007 because she was mad at her manager. T.P. was told that petitioner was scheduled for work the next three days, but the petitioner was no call/no show for those days. The employment records were not obtained by the Department.

9. On or about February 7, 2008, T.P. sent petitioner a Notice of Decision that petitioner's Food Stamp benefits would end on February 29, 2008 and that petitioner would not be eligible for benefits for the month of March 2008 because petitioner quit a job without good cause by walking off the job.

10. T.P. did not speak to petitioner and ask her response to the employer's information before taking action to sanction petitioner's Food Stamp benefits. There is no information in the record that, at this point, T.P. knew petitioner's reasons for no longer being employed.

11. Petitioner subsequently spoke to T.P. and told T.P. that she had been told to leave by her supervisor, F.T. This is the first time that petitioner told T.P. that she had been fired. On or about February 20, 2008, T.P. sent petitioner a new Separation from Employment form for more information but noted that she had to go by the information she had. During this period, T.P. sent petitioner information about good cause.

T.P. did not explain at hearing how she could make a determination without first considering both petitioner's and the employer's information.

12. Petitioner requested a fair hearing to contest the decision to disqualify her from the Food Stamp program for one month.

13. Petitioner testified that she had not left her job voluntarily but believed she was fired. Petitioner testified that her last day was December 27, 2007. She was asked by her supervisor, F.T., to come to the back room because a customer had complained about her behavior. Petitioner said her supervisor raised his voice making her uncomfortable. She stated she was told if she could not do the job; why not leave so she left. No one else was present when petitioner

and F.T. met. Petitioner did not return to work or call the employer the next day because she believed she was fired.

14. K.B. is a floor manager at petitioner's past employer who testified by telephone. K.B. was not present for the incident between petitioner and F.T., petitioner's supervisor. K.B. testified that the employer's records indicated that petitioner was insubordinate, that petitioner walked off the job after a disagreement with her supervisor, and that petitioner did not call or show up for work for the next three days even though petitioner was scheduled for work. During cross-examination, K.B. testified that she was not surprised at what happened because the petitioner was at times opinionated and would not follow policy.

15. Both T.P. and D.B-B. spoke to K.B. the day before the hearing and wrote up another Separation from Employment Form based on their conversation with K.B. that included additional information regarding petitioner such as insubordination. The reasons on this form are consistent with the type of reasons that an employer would give for firing an employee. There would be no need for this information if an employee walked off a job.

16. There was testimony regarding whether petitioner timely reported her employment to the department. As will be

more fully spelled out below, this decision will not make any determinations whether petitioner met her reporting requirements. Such an inquiry is premature and better suited for decision if an overpayment case is brought before the Board.

ORDER

The Department's decision is reversed.

REASONS

The sole issue is whether the petitioner quit her employment without good cause. The pertinent regulations governing a recipient's work requirements are found in Food Stamp Manual (FSM) § 273.7.

The regulations provide that a person who "voluntarily quits employment without good cause" is subject to sanctions. FSM § 273.7(n)(1)(iii). The first time that a person is found ineligible for failure to follow work requirements the sanction is one month of ineligibility. FSM § 273.7(g)(1)(c).

The Department is responsible for determining whether the person had good cause to quit his/her job. FSM § 273.7(n)(1)(iv). Determining good cause is first defined in FSM § 273.7(m) as:

In determining whether or not good cause exists, the State agency shall consider the facts and circumstances, including information submitted by the household member involved and the employer. Good cause shall include circumstances beyond the members control, such as, but not limited to illness, illness of another household member requiring the presence of the member, a household emergency, the unavailability of transportation or the lack of adequate child care...

The definition of good cause is augmented in FSM § 273.7(n). First, resigning from a job at the employer's demand is not a voluntary quit without good cause.² FSM § 273.7(n)(1). Second, FSM § 273.7(n)(3) notes other reasons for good cause including discrimination, unreasonable working demands such as working without being paid on schedule, taking a new job or enrolling in a school or training program at least half-time.

The household has primary responsibility for providing verification of good cause. However, if the household cannot obtain verification, the Department offers assistance. FSM § 273.7(n)(4).

In cases involving voluntary quits, the Department may be faced with different reports from the person and employer. This may be particularly true in cases involving discrimination or unreasonable work demands. A PP&D

²The Food Stamp regulations do not sanction benefits when a person has been fired irrespective whether there is cause for the firing. Fair Hearing Nos. 9,529 and 19,463.

Instructional Memo facing page 273.7(n)(3)(vii) addresses this situation:

Question: When the Food Stamp household member and the employer provide substantially or totally different versions of the facts and circumstances surrounding a voluntary quit, the information provided will be viewed as questionable. The Department then requests verification of the household's statements, and offers to assist the household in obtaining the needed verification and provides assistance to this end if the household needs it. Section 273.7(n)(4) seems to indicate that if the circumstances, for good reason, cannot be verified, then the household will not be disqualified for a voluntary quit without good cause. Is this correct?

Answer: Yes.

Petitioner argues that the Department has an affirmative duty to consider both the recipient's and employer's reasons as well as to explain good cause before making a determination whether a recipient had good cause to quit his/her job. The Department argues that they followed their usual procedures in making their determination.

Food Stamps are a remedial program. In certain cases, the Department can sanction a Food Stamp household. However, the Department has an affirmative obligation to determine good cause. Good cause cannot be determined in the absence of information from both the recipient and the employer. What is troublesome in this case is the absence of that consideration.

A decision was made based on information only from the employer even though the regulations specifically mandate the Department to consider information from both the recipient and the employer and even though the Department acknowledges verification problems when a recipient and the employer give different versions of the facts. FSM §§ 273.7(m), 273.7(n), and PP&D facing 273.7(n)(3)(vii). In fact, the PP&D protects a recipient from sanction when the competing information cannot be resolved. Giving the petitioner an opportunity after the fact does not vitiate this lack of a full and reasoned consideration of whether the petitioner was fired or not.

Once the Department made its decision to terminate petitioner's Food Stamp benefits for one month, the burden of proof was on the Department to provide first hand testimony at fair hearing to support its decision. In some respects, this is a "he said, she said" case, but, the only other first hand participant, F.T., was not called by the Department as a witness. K.B., did not have first hand knowledge as to the actual conversation between petitioner and F.T. The actual employment record was not introduced into evidence as a business record. Although not objected to, the evidence at hearing from the Department's witnesses regarding what

happened on December 27, 2007 is hearsay whose weight must be discounted. The petitioner's testimony as to her understanding that she was fired stands.

The Department questioned petitioner's credibility based on whether she reported her job in a timely fashion, but the issues regarding the reporting of her employment is not relevant to this case.

There are concerns regarding the credibility of the employer's information to the Department. The employer made clear that they were unhappy with petitioner's performance. Words such as "insubordination" are normally used to justify the firing of an employee.

Accordingly, the Department's decision to sanction the petitioner for one month is reversed. 3 V.S.A. § 3091(d).

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